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Time: 6:17:35 AM

Return To:
SAMANTHA ALLYNE BREAKSTONE
700 Broadway
New York, NY 10003

Wilson, Gregory Sr

Hillside ICAP
Does, John

Total Fees Paid: \$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
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ADAM J BELLO

MONROE COUNTY CLERK



**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF MONROE**

GREGORY WILSON SR.,

Plaintiff,

v.

HILLSIDE ICAP d/b/a CRESTWOOD
CHILDREN'S CENTER; AND JOHN DOES.

Defendants.

Index No.

VERIFIED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Gregory Wilson Sr., by his attorneys Weitz & Luxenberg PC, brings this action against Hillside ICAP d/b/a Crestwood Children's Center and John Does alleging, on personal knowledge as to himself and on information and belief as to all other matters, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants pursuant to CPLR 301 and 302, in that the Defendants reside in New York.
2. This Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.
3. Venue for this action is proper in the County of Monroe pursuant to CPLR 503 in that one or more Defendants reside in this County and a substantial part of the events and omissions giving rise to the claim occurred in Monroe County.

PARTIES

4. Plaintiff Gregory Wilson Sr. (“Plaintiff”) is an individual residing in Monroe County, New York.

5. Defendant Hillside ICAP d/b/a Crestwood Children’s Center (“Hillside”), formerly known as Convalescent Hospital for Children, is a corporation organized and existing under the laws of the State of New York, with its principal office at 1183 Monroe Avenue, Rochester, Monroe County, New York.

6. At all relevant times, Defendant Hillside ICAP created, oversaw, managed, controlled, directed and operated the Crestwood Children’s Center formerly known as Convalescent Hospital for Children (“Convalescent Hospital”) located at 2075 Scottsville Road in Rochester, Monroe County, New York.

7. At all relevant times, Defendant Hillside ICAP managed, supervised, employed, directed and/or controlled staff, counselors, and doctors assigned to work at Convalescent Hospital including Defendants John Does.

8. At all relevant times, staff, counselors, and doctors assigned to Convalescent Hospital were agents, managers, directors, or employees of Defendant Hillside ICAP.

9. Defendants John Does staff, counselors, and doctors assigned to work at Convalescent Hospital.

FACTS COMMON TO ALL CLAIMS

10. Plaintiff had a difficult home life and was sent to live at and attend Convalescent Hospital at the age of nine.

11. Plaintiff was a resident at Convalescent Hospital from nine years old to twelve years old. Twelve years old was the maximum age limit at Convalescent Hospital.

12. During the times relevant to the allegations set forth herein, Hillside ICAP was responsible for overseeing, managing, controlling, directing and operating Convalescent Hospital under a preceding name of the same business entity.

19. Defendant Hillside ICAP was created in 1890 as Infants Summer Hospital of Charlotte, in 1928 it became Convalescent Hospital for Children, in 1992 Crestwood Childrens Center, and in 2014 Hillside ICAP.

20. The Convalescent Hospital facility at 2075 Scottsville Road in Rochester, Monroe County, New York, is run by Defendant Hillside ICAP under the name Crestwood Childrens Center.

21. In approximately 1972, Plaintiff began residing at Convalescent Hospital as a student in the Olympia Dormitory.

22. Defendants John Does were staff, counselors, and doctors assigned by Defendant Hillside ICAP to Convalescent Hospital between approximately 1972 - 1975.

23. Through their positions at, within, or for the other Defendants, Defendants John Does were put in direct contact with Plaintiff, a minor resident of Convalescent Hospital.

24. In approximately 1972, when Plaintiff was about nine years of age, he was repeatedly sexually abused by Defendants John Does at Convalescent Hospital.

25. Plaintiff had the employee bathroom in his dormitory room and as a result Plaintiff was routinely subject to sexual assaults by Defendants John Does.

26. Defendants John Does used these encounters, gained through their positions at Convalescent Hospital, which granted them access to Defendants' youngest residents, when Plaintiff was approximately nine years of age, to sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

27. Defendants John Does continued to repeatedly sexually abuse Plaintiff until Plaintiff aged out of Convalescent Hospital and moved to Niagara Falls, NY with his family in approximately 1975.

28. At all times material hereto, Defendants John Does were under the management, supervision, employ, direction and/or control of Defendant Hillside ICAP.

29. Defendant Hillside ICAP knew, and/or reasonably should have known, and/or knowingly condoned, and/or covered up, the inappropriate and unlawful sexual activities of Defendants John Does who repeatedly sexually abused Plaintiff.

30. Defendant Hillside ICAP had the responsibility to manage, supervise, control and/or direct the staff who served at Convalescent Hospital and specifically had a duty not to aid

pedophiles such as Defendants John Does by assigning, maintaining, and/or appointing them to positions with access to minors.

31. Defendant Hillside ICAP had a duty to the Plaintiff to ensure that Defendant Hillside ICAP did not offer opportunities for pedophiles to approach and assault vulnerable children. Defendant Hillside ICAP knew and/or should have known that Defendants John Does used their positions at Convalescent Hospital to harm minor children, including Plaintiff, and to form an acquaintance that could be, and was, used to provide opportunities for sexual abuse.

32. Plaintiff suffered personal physical and psychological injuries and damages as a result of Defendants' actions, as well as other damages related thereto, as a result of his childhood sexual abuse.

33. As a direct result of Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, and physical manifestations of emotional distress. Plaintiff was prevented from obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity. As a victim of Defendants' sexual abuse, Plaintiff is unable at this time to fully describe all of the details of that abuse and the extent of the harm he suffered as a result.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Negligent Hiring/Retention/Supervision/Direction (As to Defendants Hillside ICAP)

34. Plaintiff repeats and re-alleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

35. Defendants Hillside ICAP at all relevant times represented or otherwise indicated to the parents of the residents at Convalescent Hospital that minor children would be physically safe while in the presence of the counselors, staff, and doctors assigned to Convalescent Hospital. Defendants Hillside ICAP entered into an express and/or implied duty to provide that when Plaintiff was a minor and left in the presence of counselors, staff, and doctors assigned to Convalescent Hospital Plaintiff would be kept reasonably safe and that that counselors, staff, and/or doctors would not sexually abuse Plaintiff.

36. Defendants Hillside ICAP, owed a duty of care to all minor persons, including Plaintiff, who were likely to come in contact with Defendants John Does or were under the supervision of Defendants John Does to ensure that Defendants John Does did not use their assigned positions to injure minors by sexual assault, sexual abuse, or sexual contact in violation of the laws of the State of New York.

37. Defendants Hillside ICAP knew or should have known of Defendants John Does' propensity for the conduct which caused Plaintiff's injuries prior to, or about the time of, the injuries' occurrence.

38. The sexual abuse of children by adults, including staff, counselors and doctors, is a foreseeable result of negligence.

39. Defendants John Does sexually assaulted, sexually abused and/or had sexual contact with Plaintiff while assigned to Convalescent Hospital.

40. Defendants Hillside ICAP, negligently hired, retained, directed, and supervised Defendants John Does as they knew or should have known that Defendants John Does posed a threat of sexual abuse to children.

41. Defendants Hillside ICAP, were negligent in failing properly to supervise Defendants John Does.

42. At all times material hereto, Defendants Hillside ICAP, were willful, wanton, malicious, reckless and/or outrageous in their disregard for the rights and safety of Plaintiff.

43. As a direct and proximate result, Plaintiff has suffered and will continue to suffer the injuries described herein.

44. By reason of the foregoing, the Defendants are liable to the Plaintiff, jointly, severally, and/or in the alternative, for compensatory damages, and punitive damages, together with interest and costs.

**SECOND CAUSE OF ACTION
 Negligence/Gross Negligence
 (As to Defendants Hillside ICAP)**

45. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

46. At all times material hereto, with regard to the allegations contained herein, Defendants John Does were under the supervision, employ, direction and/or control of Defendants Hillside ICAP.

47. Defendants Hillside ICAP owed Plaintiff, at the relevant times, a minor, a duty to protect him from Defendants John Does sexual deviancy and the consequential damages, both prior to and/or subsequent to Defendants John Does misconduct.

48. Defendants Hillside ICAP knew, or were negligent in not knowing, that Defendants John Does posed a threat of sexual abuse to children.

49. The acts of Defendants John Does described hereinabove were undertaken, and/or enabled by, and/or during the course, and/or within the scope of their respective employment, appointment, assignment, and/or agency with Defendant Hillside ICAP.

50. Defendant Hillside ICAP's willful, wanton, grossly negligent and/or negligent act(s) of commission and/or omission, resulted directly and/or proximately in the damage set forth herein at length.

51. Defendants Hillside ICAP gave improper or ambiguous orders or failed to make proper regulations, and/or employed improper persons or instrumentalities in work involving risk

of harm to others; failed adequately to supervise the activities of Defendants John Does; permitted, and/or intentionally failed and/or neglected to prevent, negligent and/or grossly negligent conduct and/or allowed other tortious conduct by persons, whether or not their servants and/or agents and/or employees, with instrumentalities under their control; and allowed the acts of omission and/or commission and/or any or all of the allegations set forth in this Complaint, to occur.

52. At all times material hereto, Defendants Hillside ICAP's actions and omissions were willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff, which amounted to conduct equivalent to criminality.

53. As a direct and/or indirect result of said conduct, Plaintiff has suffered the injuries and damages described herein.

54. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

**THIRD CAUSE OF ACTION
Breach of Non-Delegable Duty
(As to Defendants Hillside ICAP)**

55. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

56. Plaintiff, when he was a minor, was placed in the care and supervision of the Defendants Hillside ICAP for Children for the purposes of, *inter alia*, providing Plaintiff with a

safe environment in which to participate in educational, rehabilitative, youth, and recreational activities. There existed a non-delegable duty of trust between Plaintiff and Defendants.

57. Plaintiff was a vulnerable child when placed within the care of the Defendants Hillside ICAP.

58. As a consequence, Defendants Hillside ICAP were in the best position to prevent Defendants John Does sexual abuse of Plaintiff, to learn of that sexual abuse of Plaintiff and stop it, and to take prompt steps to provide that Plaintiff received timely therapy to address the harm Plaintiff suffered resulting from Defendants John Does sexual abuse of Plaintiff. Such prompt steps would have mitigated the extent of lifetime suffering Plaintiff has had to endure.

59. By virtue of the fact that Plaintiff was sexually abused as a minor child entrusted to the care of Defendants Hillside ICAP Defendants breached their non-delegable duty to Plaintiff.

60. At all times material hereto, Defendants John Does were under the supervision, employ, direction and/or control of Defendant Hillside ICAP.

61. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

62. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to the Plaintiff for compensatory damages, and punitive damages, together with interest and costs.

**FOURTH CAUSE OF ACTION
Breach of Fiduciary Duty
(As to Defendants Hillside ICAP)**

63. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

64. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendants John Does. During the times that Plaintiff was entrusted to Defendants John Does, Defendants John Does were under the supervision and control of Defendants Hillside ICAP.

65. There exists a fiduciary relationship of trust, confidence, and reliance between Plaintiff and Defendants Hillside ICAP. This relationship is based on the entrustment of the Plaintiff while he was a minor child to the care and supervision of the Defendants Hillside ICAP. This entrustment of the Plaintiff to the care and supervision of the Defendants Hillside ICAP, while the Plaintiff was a minor child, required Defendant Hillside ICAP to assume a fiduciary relationship and to act in the best interests of the Plaintiff and to protect him due to his infancy and vulnerability.

66. Pursuant to their fiduciary relationship, Defendant Hillside ICAP was entrusted with the well-being, care, and safety of Plaintiff.

67. Pursuant to their fiduciary relationship, Defendant Hillside ICAP assumed a duty to act in the best interests of Plaintiff.

68. Defendant Hillside ICAP breached their fiduciary duties to Plaintiff.

69. At all times material hereto, Defendant Hillside ICAP was willful, wanton, malicious, reckless, and outrageous in their disregard for the rights and safety of Plaintiff.

70. As a direct result of said conduct, Plaintiff has suffered injuries and damages described herein.

71. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

**FIFTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress
(As to Defendants Hillside ICAP)**

72. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

73. As described above, the actions of Defendants Hillside ICAP, their predecessors and/or successors, agents, servants and/or employees were conducted in a negligent and/or grossly negligent manner.

74. Defendants Hillside ICAP's actions endangered Plaintiff's safety and caused him to fear for his own safety.

75. As a direct and proximate result of Defendants Hillside ICAP's actions and/or inactions, which included but were not limited to negligent and/or grossly negligent conduct, Plaintiff suffered the severe injuries and damages described herein; including but not limited to mental and emotional distress.

76. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**SIXTH CAUSE OF ACTION
Breach of Duty *in Loco Parentis*
(As to Defendants Hillside ICAP)**

77. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 35 as if fully set forth herein.

78. While he was a minor, Plaintiff was entrusted by his parents to the control and supervision of Defendants John Does and Defendant Hillside ICAP. During the times that Plaintiff was entrusted to Defendants John Does, Defendants John Does were under the supervision and control of Defendants Hillside ICAP. These Defendants owe – and owed – a duty to children entrusted to them to act *in loco parentis* and to prevent foreseeable injuries.

79. Defendants Hillside ICAP breached their duty to act *in loco parentis*.

80. At all times material hereto Defendants Hillside ICAP was willful, wanton, malicious, reckless, negligent, grossly negligent and/or outrageous in their disregard for the rights and safety of Plaintiff.

81. As a direct result Hillside ICAP's conduct, Plaintiff has suffered the injuries and damages described herein.

82. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**SEVENTH CAUSE OF ACTION
Sexual Abuse
(As to Defendants John Does)**

83. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

84. Defendants John Does did sexually assault, sexually abuse, and/or have sexual contact with Plaintiff in violation of the laws of the State of New York.

85. By repeatedly sexually assaulting, sexually abusing, and/or having sexual contact with Plaintiff, Defendants John Does placed Plaintiff in imminent and reasonable apprehension of harmful and offensive contact.

86. By repeatedly sexually assaulting, sexually abusing, and/or having sexual contact with Plaintiff, Defendants John Does acted so as to cause repeated unjustified, harmful and offensive physical contact with Plaintiff.

87. As a direct result of Defendants' conduct Plaintiff has suffered the injuries and damages described herein.

88. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and for punitive damages, together with interest and costs.

**EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(As to Defendants John Does)**

89. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 33 as if fully set forth herein.

90. Defendants John Does' actions endangered Plaintiff's safety and caused him to fear for his own safety.

91. As a direct and proximate result of Defendants John Does' actions Plaintiff suffered severe injuries and damages described herein; including but not limited to mental and emotional distress.

92. By reason of the foregoing, Defendants, jointly, severally and/or in the alternative, are liable to Plaintiff for compensatory damages and punitive damages, together with interest and costs.

WHEREFORE Plaintiff, demands judgment against the Defendants on each cause of action as follows:

- A. Awarding compensatory damages in an amount to be proven at trial, but in any event in an amount that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction; extent permitted by law;
- B. Awarding punitive damages to the extent permitted by law;
- C. Awarding costs and fees of this action, including attorneys' fees to the extent permitted by law;

- D. Awarding prejudgment interest to the extent permitted by law;
- E. Awarding such other and further relief as to this Court may seem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Dated: August 14, 2019

New York, New York

Respectfully Submitted,

/s/ Samantha Breakstone
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